

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	WC Docket No. 05-271
Consumer Protection in the Broadband	)	
Era	)	

**COMMENTS OF THE STATE OF ALASKA**

In the Report and Order that accompanied the Notice of Proposed Rulemaking in this docket, the Commission determined that facilities-based wireline broadband Internet access service is an information service, and, as such, is not subject to the requirements of Title II of the Communications Act of 1934, as amended.<sup>1</sup> This Notice of Proposed Rulemaking seeks comments addressing the issue of whether certain Title II requirements should be applied to wireline broadband Internet access service under the Commission's Title I ancillary jurisdiction.<sup>2</sup> Among the Title II requirements on which the Commission seeks

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<sup>1</sup> *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al.*, Report and Order, CC Docket No. 02-33, FCC 05-150, ¶ 12 (rel. Sept. 23, 2005).

<sup>2</sup> *In the Matter of Consumer Protection in the Broadband Era*, Notice of Proposed Rulemaking, FCC 05-150, ¶¶ 146 *et seq.*

comment are the geographic rate averaging and rate integration policies of Section 254(g).<sup>3</sup> The State of Alaska submits these brief comments addressing that issue.<sup>4</sup>

The Commission states that it seeks “to ensure that our actions today [concluding that wireline broadband Internet access service is an information service and hence not subject to Title II] do not jeopardize the policies of section 254(g).”<sup>5</sup> Indeed, those policies have been fundamental national policies since long before the enactment of Section 254(g) in Telecommunications Act of 1996. In taking that action, Congress largely codified (and expanded to all carriers) pre-existing Commission policy.<sup>6</sup>

That the Commission has the authority under Title I to ensure that the policies of geographic rate averaging and rate integration are not jeopardized with respect to wireline broadband Internet access service (or other broadband Internet

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<sup>3</sup> Geographic rate averaging requires that a carrier charge rates for interexchange telecommunications services in rural and high-cost areas of a state be no higher than the rates in urban areas. Rate integration requires that a carrier charge the same rates for interstate interexchange telecommunications in each state. 47 U.S.C. § 254(g). Geographic rate averaging also “requires a carrier to charge the same rate between any two points where the distance is the same.” *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Memorandum Opinion And Order, 19 FCC Rcd 6746, ¶ 8 n. 24 (April 5, 2004).

<sup>4</sup> After reviewing the other comments filed, the State may supplement these brief comments in reply comments or other appropriate submissions.

<sup>5</sup> FCC 05-150, ¶ 157.

<sup>6</sup> Telecommunications Act of 1996, Conference Report, Rpt. 104-458, 104<sup>th</sup> Cong., 2d sess., p. 132 (Jan. 31, 1996) (referring to and citing a Commission rate integration decision from 1976).

access services) is beyond dispute. Indeed, “The Commission’s ancillary jurisdiction under Title I to impose regulatory obligations on broadband Internet access service providers was recently recognized by the Supreme Court.”<sup>7</sup>

And, as the Commission has recognized, the geographic rate averaging and rate integration policies remain important.<sup>8</sup> They were adopted to assure that residents of off-shore, remote and high-cost areas were able to communicate with the rest of the nation in a non-discriminatory manner and to provide them the benefits of the more vigorous competition taking place in more urban areas.<sup>9</sup> Broadband Internet access service is no less important to the ability of residents in

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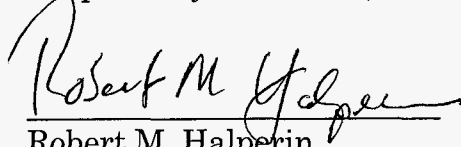
<sup>7</sup> FCC 05-150, ¶ 108 (citing *National Cable & Telecommunications Ass’n v. Brand X Internet Services*, 125 S. Ct. 2688, 2708 (2005) (stating that after designating cable modem service an information service, “the Commission remains free to impose special regulatory duties on facilities-based ISPs under its Title I ancillary jurisdiction”).

<sup>8</sup> FCC 05-150, ¶ 157.

<sup>9</sup> “Certainly, we share the same goals as MAG in working to ensure that rural Americans receive the benefits of competition and choices in the interexchange services market, and we remain committed to enforcing our long and well-established policy of geographic rate averaging and rate integration in that regard.” *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 16 FCC Rcd 19613, ¶ 182 (Nov. 8, 2001). See also *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, *supra*, 19 FCC Rcd 6746, ¶ 7 n. 20 (“Clearly, both the Commission and Congress have determined that the rate integration policy must be retained in the face of deregulation to protect consumers in the U.S. insular areas.”) (citing and quoting comments of the State of Alaska).

rural areas to communicate and thus be integrated into American (and global) society today than interexchange services have been in the past, and its importance will only increase in this regard “as consumers substitute broadband services and applications for narrowband services that were covered by section 254(g).”<sup>10</sup> The principles of geographic rate averaging and rate integration, therefore, should remain a fundamental part of the Commission’s overall policy and be applicable, in an appropriate manner, to broadband Internet access services.

Respectfully submitted,



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<sup>10</sup> FCC 05-150, ¶ 157.